

JCWSCS 23 NOV 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:)
Gary M. Zelman)
Serial No. 10/665,400)
Filed: 09/20/2003)
Title: Eyewear Having Both a Primary)
Lens Frame and an Auxiliary)
Lens Frame Separately Coupled)
To an Eyewear Platform)

Examiner: Not assigned.
Art Unit: Not assigned
Attorney Docket No.: 03-08-2106

Certificate of Transmission (37 CFR 1.8):

I hereby certify that this correspondence is being facsimile transmitted to the OIPE Customer Service Center of the United States Patent and Trademark Office, Fax No. (703) 308-7751 on November 17, 2004.

By: 

R. Joseph Trojan
Reg. No. 34,264

PETITION PURSUANT TO 37 CFR 1.181(a)

Attn: OIPE Customer Service Center
Initial Patent Examination Division
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
DEC 21 2004
OIPE/JCWS

Madam/ Sir:

Applicant respectfully submits this Petition pursuant to 37 CFR 1.181(a) to withdraw the holding of abandonment of Applicant's new U.S. Continuation Patent Application Serial No. 10/665,400 for failure to reply to the Notice to File Missing Parts mailed on November 24, 2003.

BACKGROUND OF THIS PETITION

Applicant received a Notice of Abandonment under 37 CFR 1.53 (f) or (g) dated November 9, 2004, indicating that Applicant's aforementioned application had been abandoned for failure to timely or properly reply to the Notice to File Missing Parts mailed on November 24, 2003. Exhibit 1, attached hereto, is a true and correct copy of the Notice of Abandonment. Applicant submitted his response to the Notice of Abandonment, including payment of the basic statutory filing fee, via Certificate of Transmission by facsimile on December 23, 2003. Exhibit 2, attached hereto, is a true and correct copy of Applicant's Response to Notice of Missing Parts dated 11/24/03. Applicant received a report from its facsimile machine confirming transmission to the United States Patent and Trademark Office on December 23, 2003. Exhibit 3, attached hereto, is a true and correct copy of Applicant's facsimile machine's report confirming transmission to the United States Patent and Trademark Office.

DISCUSSION

Pursuant to 37 CFR 1.181(a), Applicant respectfully requests the Director to withdraw the holding of abandonment for Applicant's Continuation-in Part Application Serial No. 10/665,400 for failure to reply to the Notice to File Missing Parts mailed on November 24, 2003 because Applicant did submit a complete response on December 23, 2003, which was within the time period set forth in the Notice, two months from the date of the Notice. 37 CFR 1.8(a)(1) states, "Correspondence will be considered as timely filed if:... (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d)". 37 CFR 1.6(d) states that for facsimile transmission, "[t]he receipt date

accorded to the correspondence will be the date on which the complete transmission is received in the United States Patent and Trademark Office". 37 CFR 1.8(b) states that if correspondence is timely filed by being transmitted in accordance with paragraph (a), after the application is held to be abandoned, if the correspondence was sent by facsimile, the correspondence will be considered timely filed if the party who forwarded the correspondence includes a copy of the sending unit's report that confirms transmission. *See* 37 CFR 1.8(b).

Applicant submitted his response to the Notice of Abandonment, including payment of the basic statutory filing fee, via Certificate of Transmission by facsimile on December 23, 2003. *See* Ex. 2. Applicant received a report from its facsimile machine confirming transmission to the Patent Office on December 23, 2003. *See* Ex. 3. Because Applicant did timely and completely reply to the Notice of Abandonment mailed on November 24, 2003 on December 23, 2003, Applicant respectfully requests that the Director withdraw the holding of abandonment.

Applicant is not enclosing any petition fee pursuant to 37 CFR 1.181(a). Furthermore, pursuant to 37 CFR 1.181(a), Applicant is enclosing a true copy of the originally filed reply and copy of the transmission in compliance with 37 CFR 1.8(b). *See* Exs. 2 and 3.

Thank you for your attention to this matter. If any additional fees are required for this Petition, please deduct the required amounts from Deposit Account No. 500703 (Trojan Law Offices).

Respectfully Submitted,

TROJAN LAW OFFICES

BY 

Dated: November 17, 2004

R. Joseph Trojan
Reg. No. 34,264

TROJAN LAW OFFICES
9250 Wilshire Blvd. Suite 325
Beverly Hills, CA 90212
Tel: (310) 777-8399
Fax: (310) 777-8348
Customer No. 23388

EXHIBIT 1



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/665,400	09/20/2003	Gary M. Zelman	03-08-2106

CONFIRMATION NO. 4403

ABANDONMENT/TERMINATION
LETTER

OC000000014320773

23388
 TROJAN LAW OFFICES
 9250 WILSHIRE BLVD
 SUITE 325
 BEVERLY HILLS, CA 90212

Date Mailed: 11/09/2004

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 11/24/2003.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

12/21/2004 TL0011 00000001 500703 10665400

01 FC:2001 395.00 OP
 02 FC:2051 10.00 DA 55.00 OP

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

EXHIBIT 2

IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE

In re application of:

ZELMAN, Gary M.

5 Serial Number: 10/665,400

Examiner: TBD

Filed: 9/20/2003

Art Unit: TBD

Title: EYEWEAR HAVING BOTH A PRIMARY LENS FRAME AND AN
AUXILIARY LENS FRAME SEPARATELY COUPLED TO AN EYEWEAR
PLATFORM

10

Certificate of Transmission

I hereby certify that this correspondence is being facsimile
transmitted to the U.S. Patent and Trademark Office, Office of
Initial Patent Examination, Fax No. (703) 746-4046 on December
15 23, 2003.

By:



John R. Carr (USPTO No. 42,390)

20

RESPONSE TO
NOTICE OF MISSING PARTS DATED 11/24/03

25 Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

30 Dear Sir:

In response to the Notice of Missing Parts dated November
24, 2003 in the above-referenced action, Applicants herein
enclose a Fee Transmittal form, a Credit Card Payment form, and
a copy of the original Notice of Missing Parts.

The Commissioner is hereby authorized to charge the full \$450 fee to the credit card and/or credit any overpayments. If there are any problems in transmission please do not hesitate to contact this office directly.

5 Respectfully submitted,

Trojan Law Offices

10 Date: December 23, 2003 By:


John R. Carr (USPTO No. 42,390)

PTO/SB/17 (10-03)

Approved for use through 07/31/2006, OMB 0651-0032

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL

for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 450)

Complete if Known

Application Number 10/665,400
 Filing Date 9/20/2003
 First Named Inventor Gary M. Zelman
 Examiner Name TBD
 Art Unit TBD
 Attorney Docket No. 03-08-2106

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None☐ Deposit Account:Deposit Account Number
Deposit Account Name

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1)			(\$ 385.00)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims -20** = X =
 Independent Claims -3** = X =
 Multiple Dependent =

<u>Large Entity</u>		<u>Small Entity</u>		<u>Fee Description</u>
<u>Fee Code</u>	<u>Fee (\$)</u>	<u>Fee Code</u>	<u>Fee (\$)</u>	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, If not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

**or number previously paid, if greater. For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	65.00
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(c)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 65.00)

SUBMITTED BY

(Complete if applicable)

Name (Print/Type) John Carr Registration No. (Attorney/Agent) 42,390 Telephone 310-777-8399
 Signature *John Carr* Date December 15, 2003

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



UNITED STATES PATENT AND TRADEMARK OFFICE

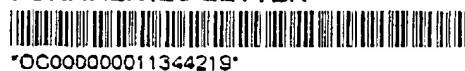
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/665,400	09/20/2003	Gary M. Zelman	03-08-2106

23388
TROJAN LAW OFFICES
9250 WILSHIRE BLVD
SUITE 325
BEVERLY HILLS, CA 90212

CONFIRMATION NO. 4403

FORMALITIES LETTER



OC000000011344219

Date Mailed: 11/24/2003

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
Applicant must submit \$ 385 to complete the basic filing fee for a small entity.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$450** for a Small Entity

- **\$385** Statutory basic filing fee.
- **\$65** Late oath or declaration Surcharge.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

R. Nees

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART I - ATTORNEY/APPLICANT COPY

EXHIBIT 3

TRANSMISSION VERIFICATION REPORT

TIME : 12/23/2003 15:22
NAME : TROJAN LAW OFFICES
FAX : 3107778348
TEL : 3107778399

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

12/23 15:20
17037464046
00:01:34
06
OK
STANDARD
ECM

IN THE UNITED STATES PATENT ANDTRADEMARK OFFICE

In re application of:

ZELMAN, Gary M.

5 Serial Number: 10/665,400

Examiner: TBD

Filed: 9/20/2003

Art Unit: TBD

Title: EYEWEAR HAVING BOTH A PRIMARY LENS FRAME AND AN
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15 23, 2003.

By:


John R. Carr (USPTO No. 42,390)

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RESPONSE TO
NOTICE OF MISSING PARTS DATED 11/24/03

25 Mail Stop Missing Parts
Commissioner for Patents